



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 2, 1998

Mr. Frank M. Crull  
Assistant General Counsel  
Texas Department of Public Safety  
5805 North Lamar Blvd.  
Austin, Texas 78773-0001

OR98-2554

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119187.

The Texas Department of Public Safety (the "department") received a request for fifteen categories of information related to a named officer, including information concerning radar equipment and the personnel file of the officer and his training supervisor. You claim that the requested radar manual is excepted from disclosure under sections 552.108 and 552.110 of the Government Code. You have submitted the manual you seek to withhold. Because you do not seek to withhold any information responsive to the other categories of information, we presume that this information has been released to the requestor.

Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 applies. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); Open Records Decision No. 216 at 4 (19978); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform this office that requested information concerns an investigation and potential litigation involving a state entity. The use of the radar manual will concern the investigation of various criminal traffic tickets. You also state that "[p]roduction of this manual will give insight into how individuals may avoid law enforcement of traffic laws." We find that you have shown that some of the requested manual will interfere with the detection, investigation, or prosecution of crime. *See* Open Records Decision No. 216 at 4 (1978). You may withhold pages 6-7 and 18-26 in their entirety and a portion of page 27 under section 552.108. We have marked the portions of the manual that may be

Since the property and privacy rights of third parties may be implicated by the release of the requested information, this office notified Applied Concepts, Inc.(the company) about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). The company responded to our notice and makes general assertions that portions of the Stalker radar manual are excepted from disclosure. The company, however, has not established that any portions of the manual are protected from disclosure. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). You may withhold the marked portions of the manual under section 552.108. The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 119187

Enclosures: Marked documents

cc: Carl Crenshaw  
P.O. Box 557  
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(w/o enclosures)